Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

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SEC Opinion No. 09-15
Nationality Requirement
on Rice and/or Corn Industry

ATTENTION: **Atty. Marievic G. Ramos-Anonuevo**

SUBJECT : Philippine Nationality Requirements on Rice and Corn Business

Gentlemen:

This refers to your letter-request for opinion dated 10 September 2008 with respect to the coverage of the nationality requirements in the rice and corn industry.

In view thereof, you have provided the following set of facts:

The corporation involved is a domestic corporation organized and existing under Philippine laws. It is engaged, among others, in the following core activities relating to research, development, production, import, distribution of rice, field corn seeds, and seed products:

a) They conduct research and development of hybrid field corn seeds wherein they breed and conduct test and field trials for hybrid field corn seeds.

b) They also conduct similar testing and field trials of rice seeds samples from other countries for the purpose of determining adaptability for production in the Philippines.

c) Once hybrid seeds of rice and field corn seeds are selected, they are submitted for testing by the government in order to get accreditation.

d) Once accreditation is obtained, the hybrid rice, field corn seeds, and seeds are commercialized, launched,

marketed and distributed by wholesale to appointed distributors/dealers.

e) They enter into production contracts with local growers/farmers to grow and produce the commercial hybrid field corn seeds in bulk volumes. These commercial hybrid seeds are then processed, treated and packed for sale to appointed distributors/dealers and supplied in bulk wholesale to these distributors/dealers.

f) They are permitted to develop genetically modified field corn seeds.

g) These field corn seeds are sold and used mainly as animal/grain feed.

In the main, your questions are as follows:

> First, considering that the activities of the corporation are confined to the "upstream stage of the rice and field corn seeds, i.e., rice and field corn seeds production", is the corporation covered by the limitation provided in the Seventh Regular Foreign Investment Negative List; and
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> Second, assuming that the corporation is covered by such limitation, when is the start of the divestment period, as required by law.

A definition of "rice and corn industry" is instructive. Under Republic Act No. 3018[1], it means "the culture, milling, warehousing, transporting, exportation, importation, handling the distribution, either in wholesale or retail, the provisions of Republic Act Numbered Eleven Hundred and Eighty to contrary notwithstanding, or the acquisition for the purpose of trade of rice (husked or unhusked) or corn and the by-products thereof ."

Subsequent thereto, Presidential Decree No. 194[2] defined the term "rice and/or corn industry" to include the following activities:

a. Acquiring by barter, purchase or otherwise, rice and corn and/or the by-products thereof, to the extent of their raw

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[1] An Act Limiting the Right to Engage in the Rice and Corn Industry to Citizens of the Philippines and for Other Purposes

[2] Authorizing Aliens. as well as Associations, Corporations or Partnerships Owned in Whole or in Part by Foreigners to Engage in the Rice and Corn Industry, and for Other Purposes

material requirements when these are used as raw materials in the manufacture or processing of their finished products.

b. Engaging in the culture, production, milling processing and trading, except retailing, of rice and corn. xxx

From the foregoing, there can be no other conclusion but that, the subject corporation's rice and field corn seeds production, for purposes of trading the same, falls within the "rice and corn industry."

With regard to your second query, the Commission will decline to respond thereto on the ground that such issue does not fall within its jurisdiction. Highly instructive is the ruling of the Court of Appeals in the case of Purina Philippines, Inc. vs. Hon. Waldo Q. Flores and National Food Authority[3], which we hereby quote in full:

> "Section 5 of P.D. No. 194 provides furthermore, that 'in connection with the foreign equity participation, at least 60% thereof shall be transferred to Filipino citizens over a period to be established by the National Grains Authority (now NFA) at the time of approval of its authority to engage in the industry or phase out its operation within the same period.'
>
> It is, thus, within the authority of public respondent NFA to require Purina to submit a divestment plan of sixty (60%) percent of its foreign equity participation as NFA's guide in establishing the divestment period pursuant to the provisions of P.D. No. 194."

We note, however, that on 27 May 1998, the National Food Authority Council issued Resolution No. 193-98[4], which provides:

> "RESOLVED THAT, the NFA Council hereby approves and confirms a 30-year divestment period for the divestment of 60% of the foreign investors' equity participation on the rice and corn business as required by Sec. 5 of PD 194.
>
> RESOLVED, FURTHER that the Council likewise confirms that the 30-year divestment period shall start from the actual operation of the business in the Philippines."

The interpretation of the same would rest primarily on the National Food Authority.

It shall be understood that the foregoing opinion is rendered, based solely on the facts and circumstances disclosed in the queries, relevant solely to the particular issues raised therein, and shall not be used in the nature of a

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3 docketed as CA-G.R. SP No. 91619 and promulgated on 04 July 2007

4 cited in the Executive Order No. 584, promulgating the seventh Regular Foreign Investment Negative List

standing rule binding on the Commission in other cases, whether similar or dissimilar circumstances. If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be considered as null and void.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel